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Attorney for Plaintiff, JAMES M. KINDER, an individual

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JAMES M. KINDER,

Plaintiff,

v.

HARRAH'S ENTERTAINMENT, Inc.;
HARRAH'S OPERATING COMPANY,
Inc.; HARRAH'S MARKETING
SERVICES CORPORATION; HARRAH'S
LICENSE COMPANY, LLC; HARRAH'S
LAUGHLIN, Inc.; HBR REALTY
COMPANY, Inc. and DOES 1 through 100,
inclusive,

Defendants.

Case No. 07 CV 2132 DMS (AJB)
[Consolidated with 07CV2226 DMS (AJB)]

Judge: Hon. Dana M. Sabraw
Mag. Judge: Hon. Anthony J. Battaglia

**POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF'S MOTION
TO STRIKE EVIDENCE SUBMITTED
BY DEFENDANTS IN SUPPORT OF
THEIR REPLY RESPONSE TO
PLAINTIFF'S OPPOSITION TO
MOTION TO DISMISS**

Date: April 25, 2008
Time: 1:30 p.m.
Courtroom: 10

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1 **1. Declaration of Ronald R. Giusso, in its entirety:**

2 Defendants have filed a Declaration by Ronald R. Giusso dated April 18, 2008.

3 **Grounds for objection:**

4 Mr. Giusso's declaration does not state that the matters attested to therein are based upon
 5 Mr. Giusso's personal knowledge, let alone lay any proper foundation for any personal
 6 knowledge upon which he makes his declaration. Mr. Giusso merely states that "I could and
 7 would competently testify to all facts within my personal knowledge except where stated on
 8 information and belief." (¶ 1) This is insufficient for the court to conclude that all of the matters
 9 stated in Mr. Giusso's declaration are based upon personal knowledge. In fact, it appears that
 10 Mr. Giusso is attempting to state that he would be willing to testify to those facts that *are* within
 11 his personal knowledge, but does not say which matters stated in the declaration are actually
 12 within his personal knowledge. Finally, this new evidence was submitted after Plaintiff filed his
 13 opposition to Defendants' motion and therefore constitutes an improper newly submitted matter,
 14 which should have been offered with Defendants' original moving papers, if at all. Therefore,
 15 the entirety of Mr. Giusso's declaration should be stricken.

16 **2. Declaration of Ronald R. Giusso, Paragraph 3:**

17 Paragraph 3 of the Declaration of Ronald R. Giusso states:

18 "An example of KINDER's false and misleading 'evidence' submitted in support
 19 of his opposition is with respect to the casino known as Harrah's Rincon Casino
 20 and Resort. The Rincon Casino is owned and operated by the Rincon San Luiseno
 21 Band of Mission Indians – not any Harrah's entity. This information is available
 22 to any member of the public who bothers to conduct a rudimentary search."

Grounds For Objection:

Each and every factual statement in this paragraph lacks foundation and therefore this paragraph should be stricken in its entirety. Moreover, Mr. Giusso's comments state legal conclusions ["false and misleading 'evidence'"; "Resort is owned and operated by the Rincon San Luiseno Band of Mission Indians – not any Harrah's entity"] and offer inappropriate non-expert "opinion" testimony about the nature of Plaintiff's evidence. Finally, this new evidence was submitted after Plaintiff filed his opposition to Defendants' motion and therefore constitutes an improper newly submitted matter, which should have been offered with Defendants' original moving papers, if at all.

3. Exhibit 6, attached to the Declaration of Ronald R. Giusso:

Defendants have offered as evidence "a true and correct copy of the Tribal-state Compact Between The State of California and the Rincon San Luiseno Band of Missions Indians, which indicates that the Rincon Tribe owns and operates the casino known as the Rincon Casino and Resort."

Grounds For Objection:

Defendants have not laid a proper foundation for this evidence nor has this evidence been authenticated. This evidence is hearsay and was submitted after Plaintiff filed his opposition to Defendants' motion and therefore constitutes an improper newly submitted matter, which should have been offered with Defendants' original moving papers, if at all.

4. Declaration of Ronald R. Giusso, paragraph 4:

Mr. Giusso states "Attached hereto is a true and correct copy of the Tribal-state Compact Between The State of California and the Rincon San Luiseno Band of Missions Indians, which

1 indicates that the Rincon Tribe owns and operates the casino known as the Rincon Casino and
2 Resort.”

3 **Grounds For Objection:**

4 Mr. Giusso has not laid a proper foundation for this statement and this statement
5 constitutes an improper legal conclusion in the form of Mr. Giusso’s non-expert opinion. This
6 evidence is hearsay and was submitted after Plaintiff filed his opposition to Defendants’ motion
7 and therefore constitutes an improper newly submitted matter, which should have been offered
8 with Defendants’ original moving papers, if at all.
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10 DATED: April 22, 2008

11 By: /s/ Chad Austin

12 CHAD AUSTIN, Esq., Attorney for
13 Plaintiff, JAMES M. KINDER
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